



# HAWAII STATE ETHICS COMMISSION

State of Hawaii • Bishop Square, 1001 Bishop Street, ASB Tower 970 • Honolulu, Hawaii 96813

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March 21, 2013

The Honorable Scott Y. Nishimoto, Chair  
The Honorable John M. Mizuno, Vice Chair  
Honorable Members  
House Committee on Legislative Management  
Hawaii State Capitol, Room 439  
415 South Beretania Street  
Honolulu, Hawaii 96813

Re: **Testimony on Senate Bill No. 893, SD 1, Relating to Ethics**

Hearing: March 21, 2013, 2:00 p.m.  
State Capitol, Conference Room 423

Testimony From: Hawaii State Ethics Commission

The Hawaii State Ethics Commission strongly opposes SB No. 893, SD 1, which will retroactively exempt members of task forces from the conflicts of interest provision of the State Ethics Code. As explicitly stated in section 1 of the original form the bill, the underlying and only purpose of the bill is to retroactively exempt members of the Mortgage Foreclosure Task Force from the State Ethics Code's conflicts of interest provision. In the Commission's view, it is poor policy and contrary to the public interest and will erode public trust to create a law to retroactively excuse one Task Force member's conscious and knowing violation of the State Ethics Code.

The Mortgage Foreclosure Task Force, created by Act 162, Sessions Laws of Hawaii 2010, no longer exists. The Task Force ceased to exist on June 30, 2012, almost nine months ago. For that reason alone, there is no reason to exempt the members of the Task Force -- after-the-fact -- from the State Ethics Code.

In May 2011, the Commission advised all of the members of the Task Force that a provision of the State Ethics Code prohibited them from lobbying the legislature, for pay,

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on behalf of private organizations relating to bills recommended by the Task Force.<sup>1</sup> The Commission understands that all of the members of the Task Force, except one, conformed their conduct to be consistent with the Commission's opinion, i.e., the members who previously, during the 2011 legislative session, were paid to testify on Task Force-recommended bills on behalf of private organizations did not do so during the 2012 legislative session, based on the Commission's advice.

In February 2012, the Commission reiterated its position to one member of the Task Force after learning that he was testifying on behalf of his private client on a bill or

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<sup>1</sup> Specifically, the memo stated:

The State Ethics Code prohibits a member of the Task Force from being compensated to represent non-governmental organizations, such as businesses, both for-profit and not for-profit, trade organizations, or other groups, on matters in which the Task Force participated or will participate. For example, a member of the Task Force who is an employee of a company may not receive a salary to lobby on behalf of the company on legislation that was recommended by the Task Force. Similarly, a member of the Task Force may not otherwise be paid to privately lobby on behalf of a company, trade organization, or other group on legislation that was recommended by the Task Force.

We emphasize that the State Ethics Code does not prohibit a member of the Task Force from testifying on behalf of the Task Force. We also note that private, nongovernmental organizations are not prohibited from lobbying on any matter. As explained above, in certain situations, the State Ethics Code prohibits a member of the Task Force from being compensated to lobby on behalf of an organization. Individuals other than the members of the Task Force may testify on behalf of the organization.

We are providing you with this letter to alert members of the Task Force of our concerns that members who are paid lobbyists or employees of non-governmental organizations may have testified on bills that were drafted or recommended by the Task Force. As noted above, such action appears to be in violation of the State Ethics Code. Staff, however, does not intend to recommend any further action by the State Ethics Commission relating to any lobbying by Task Force members on Task Force-related matters this past legislative session. We strongly advise members of the Task Force against testifying, in the future, as paid representatives of non-governmental organizations on matters in which the Task Force participated or will participate.

(Emphasis added).

bills reflecting the Task Force's recommendations.<sup>2</sup> That conduct appeared to be contrary to the advice repeatedly provided to him and to the other members of the Mortgage Foreclosure Task Force. The member continued lobbying the legislature during the entire 2012 legislative session on behalf of his client relating to the bills proposing the Task Force's recommendations. His lobbying activities continued notwithstanding the Commission's clear and continuing advice to him that those actions violated the State Ethics Code.

In 2012, the legislature passed Act 208, apparently in response to the State Ethics Commission's advice to the members of the Mortgage Foreclosure Task Force. Act 208 amends the State Ethics Code to exempt members of state task forces from certain of the statute's provisions, including the conflicts of interests provision that was at issue with the Mortgage Foreclosure Task Force. Act 208's effective date is July 1, 2012.

This bill, in essence, will make Act 208 retroactive, in order to cover the Mortgage Foreclosure Task Force. In effect, the legislature will be "rewarding" a single individual for intentionally ignoring and defying the Commission's advice. In the Commission's opinion, "excusing" a person for knowingly acting in a way that is contrary to the Commission's explicit position is poor public policy and will severely undermine the Commission's ability to effectively administer the State Ethics Code. The message that this bill will convey is

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<sup>2</sup> By letter dated February 2, 2012, the Commission again advised, in relevant part:

In the event that you and the other members of the Task Force truly are unclear about the Commission's position, I am writing to make that position clear: Members of the Mortgage Foreclosure Task Force cannot, for pay or other compensation, lobby the legislature on behalf of a non-governmental organization on bills relating to the matters that the members worked on as part of the Task Force. More specifically, that means, among other things, Task Force members cannot be paid to testify on behalf of a non-governmental organization on a bill implementing the Task Force's recommendations. To be clear, the Commission's position is not dependent on whether you are testifying in support of the bill, testifying in opposition to the bill or seeking an amendment to the bill. You simply cannot testify on behalf of a non-governmental entity on the bill if you are paid to do so.

I am aware that you have been offering testimony on behalf of the Hawaii Financial Services Association ("HFSA") on House Bill No. 1875, which I understand implements the Mortgage Foreclosure Task Force's recommendations. If you are being paid by HFSA to testify on its behalf, unless there are factors to which I am unaware that might otherwise allow you to do so, your conduct appears to be contrary to the State Ethics Commission's guidance to you and appears to be a violation of the State Ethics Code.

(Emphasis added; footnote omitted).

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that a person who is displeased with the advice given by the Commission can consciously ignore that advice and violate the State Ethics Code and then, after the fact, ask the legislature to exempt his conduct. Allowing state employees, legislators and board members to retroactively amend the law to excuse a violation of the State Ethics Code is against the public interest and will erode the public trust in government.

For the reasons stated above, the Commission strongly urges the Committee to hold SB No. 893, SD 1.

Thank you for considering the Commission's testimony.



House Legislative Management (LMG) Committee  
Chair Scott Nishimoto, Vice Chair John Mizuno

Thursday 03/21/13 at 02:00PM in Room 423  
HB1209– Relating to the Legislative Broadcast Program

TESTIMONY

Carmille Lim, Executive Director, Common Cause Hawaii

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Dear Chair Nishimoto, Vice Chair Mizuno, and members of the Legislative Management Committee:

**Common Cause Hawaii opposes SB893 SD2.**

This bill proposes to retroactively grant task force members exemptions from the state's Conflict of Interest policy and confidentiality laws. Act 208 was passed in 2012 and took effect on July 1, 2012.

By allowing this SB893 to pass, the Legislature would set a bad precedent and would encourage allowing an individual (i.e., legislators, state employees and board members) to purposefully and intentionally violate the state ethics code, then seek legislative exemption *afterward*.

**Thank you for the opportunity to testify in opposition to SB893 SD2.**



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HOUSE COMMITTEE ON LEGISLATIVE MANAGEMENT  
Representative Scott Y. Nishimoto and Rep John M. Mizuno, Chairs  
Thursday, March 21, 2013, 2:00 p.m., Room 423

SB 893, SD1 RELATING TO ETHICS

TESTIMONY

Janet Mason, Vice-President, League of Women Voters of Hawaii

Chair Hee, Vice-Chair Shimabukuro, and Committee Members:

**The League of Women Voters of Hawaii opposes SB893, SD1** which proposes to grant exemptions from the State's conflict of interest and confidentiality laws for "task force members and designees or representatives of members of any task force **that existed on or after June 3, 2010.**"

Under Chapter 84, "task force" includes any group convened for a limited, specified period by legislative or executive act or order, or by invitation of a state officer for the purpose of studying a subject or issue, making recommendations, or advising state officials. But **only since July 1, 2012** have such task force members been exempt from the conflict of interest and confidentiality provisions of the State Ethics Code.

The League of Women Voters and many other public interest organizations adamantly opposed these 2012 exemptions for task forces because we were gravely concerned about the inherent risk of actual or perceived conflicts of interest that could arise during the normal course of a task force assignment. We also cautioned that while the stated purpose of last year's law was to exempt those on a task force from the conflict of interest and confidentiality laws, such an exemption may have unintended consequences, such as totally excluding task force members from the state ethics code.

Now we are left dumbfounded about why this measure should be retroactive to June 3, 2010, when the 2012 conference committee specifically amended last year's bill to make the measure effective July 1, 2012.



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We want all those who participate in the formulation of public policy, laws and rules to be held to a high standard. The purpose in having a Code of Ethics is to prevent corruption in government. We urge you to hold the bill in committee. We urge you to vote down this bill. Thank you for the opportunity to submit testimony.

# HAWAII FINANCIAL SERVICES ASSOCIATION

c/o Marvin S.C. Dang, Attorney-at-Law

P.O. Box 4109

Honolulu, Hawaii 96812-4109

Telephone No.: (808) 521-8521

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March 21, 2013

Rep. Scott Y. Nishimoto, Chair  
and members of the House Committee on Legislative Management  
Hawaii State Capitol  
Honolulu, Hawaii 96813

Re: **Senate Bill 893, S.D. 1 (Ethics)**  
**Hearing Date/Time: Thursday, March 21, 2013 at 2:00 p.m.**

I am Marvin Dang, the attorney for the **Hawaii Financial Services Association** ("HFSA"). The HFSA is a trade association for Hawaii's consumer credit industry. Its members include Hawaii financial services loan companies (which make mortgage loans and other loans, and which are regulated by the Hawaii Commissioner of Financial Institutions), mortgage lenders, and financial institutions.

**The HFSA supports this Bill, and requests that it be effective "on approval".**

The purposes of this Bill are to: (1) exempt members and designees or representatives of members of task forces that existed on or after June 3, 2010 from certain provisions of the Code of Ethics, and (2) specify a retroactive date of June 3, 2010 for the exemption.

## **A. Background.**

The Mortgage Foreclosure Task Force ("Task Force") was created by the Legislature by Act 162 in 2010 to "undertake a study to develop both general and specific policies and procedures necessary to improve the manner in which mortgage foreclosures are conducted in [Hawaii]." The Task Force was directed to submit reports of its findings and recommendations, including any proposed legislation, to the 2011 and 2012 Legislatures.

The Task Force began on June 3, 2010 and ended on June 30, 2012. Because the HFSA was one of the organizations required by Act 162 (2010) to be represented on the Task Force, I was its representative. I was a member and the Vice Chair of the Task Force. (This testimony is not written on behalf of the Task Force or on behalf of any of the other Task Force members.)

The Mortgage Foreclosure Task Force started meeting in July, 2010. Ten months later, the Leslie Kondo, the Executive Director of the Hawaii State Ethics Commission, sent a Memorandum dated May 26, 2011 to the members of the Task Force. Mr. Kondo's Memorandum stated:

"The State Ethics Code prohibits a member of the Task Force from being compensated to represent non-governmental organizations, such as businesses, both for-profit and not for-profit, trade organizations, or other groups, on matters in which the Task Force participated or will participate.

...

"... We strongly advise members of the Task Force against testifying, in the future, as paid representatives of non-governmental organizations on matters in which the Task Force participated or will

participate.”

The relevant provision of the Ethics Code is Hawaii Revised Statutes Sec. 84-14(d):

“No legislator or employee shall assist any person or business or act in a representative capacity for a fee or other compensation to secure passage of a bill or to obtain a contract, claim, or other transaction or proposal in which he has participated or will participate as a legislator or employee, nor shall he assist any person or business or act in a representative capacity for a fee or other compensation on such bill, contract, claim, or other transaction or proposal before the legislature or agency of which he is an employee or legislator.” (Emphasis added.)

On July 18, 2011, I sent a letter to the Ethics Commission in which I wrote:

“I disagree with the conclusions in your Memorandum. A copy of your Memorandum is attached for your reference. I contend that your Memorandum is overly broad and inconsistent with applicable statutes. Accordingly, I am respectfully requesting that you reconsider and retract your Memorandum.” (Emphasis included.)

Also in my letter to the Ethics Commission, I stated:

“For you to make that interpretation, you needed to have determined that a “task force”, such as the Mortgage Foreclosure Task Force, is a board, commission or committee under the definition of “employee” in HRS §84-3. ...

“As you may know, a “task force” is different from a board or commission, and it is not a committee (such as a committee that is part of a department). The Mortgage Foreclosure Task Force has a limited duration: it was created by Act 162 on June 3, 2010 and it sunsets on June 30, 2012. It was established by the Legislature to conduct an analysis of all factors affecting mortgage foreclosures and to recommend appropriate legislation. It is required to submit reports of its findings and recommendations to the Legislature. The Task Force is solely advisory. It does not have regulatory powers. It does not make policy. Its members are not appointed by the Governor nor are they confirmed by the Senate. The Task Force is within the Department of Commerce & Consumer Affairs for administrative purposes.” (Emphasis added.)

The Ethics Commission did not retract its Memorandum. Unfortunately, as a result of the Memorandum of May 26, 2011, two members of the Mortgage Foreclosure Task Force resigned before the Task Force’s August 2, 2011 meeting.

Last year, Act 208 was enacted to exempt members of state task forces from some of the restrictions and prohibitions of the State Ethics Code. The Legislature believed that this would

encourage people with specialized knowledge and experience to serve on temporary task forces created by the legislative and executive branches. These people would be able to volunteer their time and expertise to serve the public by studying issues, making recommendations, and offering advice without fear of violating the conflicts of interest provisions in the Ethics Code.

However Act 208, which was effective on July 3, 2012, did not have a retroactive date and did not clarify that the exemption applied to task forces created before that date.

Senate Bill 893 simply furthers the purpose of Act 208 by specifying a retroactive date of June 3, 2010. This Bill reiterates the Legislature's intent that certain task forces created before the effective date of Act 208 are exempt from specific provisions of the Ethics Code.

**B. The concept of a retroactive date was first suggested by Leslie Kondo of the Ethics Commission.**

**The concept of a retroactive date was first suggested in 2012 by Leslie Kondo, Executive Director of the Hawaii State Ethics Commission.** In a letter dated February 2, 2012 from Mr. Kondo to me, he referenced Senate Bill 2240 (2012 Legislative Session) which, as introduced, would exempt members of groups convened solely to provide comments, share technical knowledge or expertise, or assist in formulating recommendations to, with or for the Legislature, Governor, or other state departments, agencies, or boards, from the State Code of Ethics. Senate Bill 2240 had a similar intent as House Bill 2175 (2012). House Bill 2175, Conference Draft 1, became Act 208 (2012).

In his February 2, 2012 letter to me (and copied to all the members of the Mortgage Foreclosure Task Force), Mr. Kondo, representing the Ethics Commission, wrote:

**“For your information, after the [January 27, 2012] Committee hearing [on Senate Bill 2240], I informed Senator Clayton Hee that the bill, as passed by the Committee, does not appear to apply retroactively. I suggested to Senator Hee that, if the Legislature’s intent is to exempt you [Marvin Dang] and the other members of the Mortgage Foreclosure Task Force from the State Ethics Code, the Legislature should consider including language in the bill to make the amendment retroactive to a specific date.”** (Bracketed material added; emphasis added.)

Having a retroactive date in this year's Senate Bill 893 is entirely consistent with the helpful suggestion that Mr. Kondo made to Sen. Hee in 2012.

**C. Meetings of the Mortgage Foreclosure Task Force were publicly held in compliance with the Hawaii Sunshine Law.**

Some opponents of this Bill believe that members of various state task forces can obtain “inside” information. From my experience with task forces, that is a misconception. The members of the Mortgage Foreclosure Task Force didn't receive any “inside” information. That's because all

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16 meetings were conducted in accordance with the Hawaii Sunshine Law (HRS Chapter 92). Written notices of all the meetings were publicly given. The meetings were open to the public and held in a public location (Department of Commerce & Consumer Affairs). All input, discussion, motions, and votes were done in public. A Deputy Attorney General was present at each meeting to advise the Task Force on Hawaii Sunshine Law issues. Minutes of meetings were posted on the State's website. A Preliminary Report of the Task Force was submitted to the Legislature before the 2011 Legislative Session. A Final Report of the Task Force was submitted to the Legislature before the 2012 Legislative Session. Both Reports were prepared with the assistance of the Legislative Reference Bureau and are publicly posted on the DCCA's website. Legislation was prepared and introduced based on the recommendations in the Reports. There was transparency in all of the Task Force's activities.

The public, open, and transparent manner in which the activities of the Mortgage Foreclosure Task Force were conducted is similar for other state task forces. I speak from experience. I was a member and Vice Chair of the Hawaii Identity Theft Task Force created by Act 140 (2006) from 2006 through 2008. I was also a member of the Hawaii Anti-Phishing Task Force created by Act 65 (2005) from 2005 to 2006.

Some opponents of Act 208 and this Bill believe that when there are task forces, there is "influence-peddling". They are wrong. There is no "influence-peddling" with task forces like the Mortgage Foreclosure Task Force. "Influence peddling" is a situation where State employees are hired by third parties who want to take advantage of inside contacts and information that the State employees have acquired from working for the State. The situation with the Mortgage Foreclosure Task Force (and other task forces) is the reverse of "influence-peddling". In creating the Task Force, the Legislature contemplated and expected that some Task Force members, i.e. stakeholders including paid lobbyists, would appear before the Legislature to testify and share their views on foreclosure issues and foreclosure legislation. Task Force members, some of whom were lobbyists, were selected specifically to be on the Task Force because they could bring their own independent expertise or knowledge to the Task Force. As stated, the activities of the Mortgage Foreclosure Task Force (and other task forces) were conducted in a public, open, and transparent manner.

**D. Leslie Kondo of the Ethics Commission said in May, 2011 he will not recommend action by the Commission for apparent violations in 2011.**

As mentioned above, Mr. Kondo, on behalf of the State Ethics Commission, sent a May 26, 2011 Memorandum to the Mortgage Foreclosure Task Force. He wrote:

"We are providing you with this letter to alert members of the Task Force of our concerns that members who are paid lobbyists or employees of non-governmental organizations may have testified [during the 2011 legislative session] on bills that were drafted or recommended by the Task Force. As noted above, such action appears to be in violation of the State Ethics Code. Staff, however, does not intend to recommend any further action by the State Ethics Commission relating to any lobbying by Task Force members on Task Force-related matters this past [2011] legislative session."  
(Bracketed material added; emphasis added.)

Mr. Kondo is saying that the Ethics Commission's staff can selectively choose not to recommend that the Commission take action against Task Force members who he said appeared to violate the State Ethics Code in 2011. Yet it is puzzling why Mr. Kondo would oppose the Legislature's choice to put a retroactive date in this year's Senate Bill 893 to exempt task force members from the same provisions of the Ethics Code that Act 208 exempted task force members. It should be noted that Mr. Kondo has not said that the Ethics Commission itself will not pursue any action against Task Force members for any alleged violations prior to July 3, 2012 (the effective date of Act 208).

**E. The May 26, 2011 Memorandum of the Ethics Commission has been deemed "erroneous" in its determination that task force members are state employees for purposes of the Ethics Code.**

After Mr. Kondo wrote his Memorandum in May 26, 2011, the **Senate Majority Research Office** concluded in a July 15, 2011 Memorandum (approved by Senate Majority Attorney Richard Wada) that:

"The State Ethics Commission is erroneous in its determination that members of a task force are state "employees" for purposes of the Ethics Code, despite the Ethics Commission's long-standing practice of defining task force members as "employees" and reliance on that definition as precedent in issuing opinions." (Emphasis added.)

The Senate Majority Research Office's Memorandum further stated:

"By contrast [to boards and commissions], task force members do not act on behalf of the State. They perform no adjudicatory or decision-making actions, and they do not bind the State. Task force members are selected and invited onto the task force to advocate for their private or professional positions. They are selected to represent the point of view of a particular industry or business and to bring their knowledge and perspective to assist the task force in its information-gathering and recommendation-making functions. Task force members are not required to be impartial, because it is their partiality in representing their industry or business that makes their input valuable. They do not represent the State in actions with third parties, have no authority to make concrete decisions regarding the rights of others, and cannot bind the State. There is no potential for a conflict of interest because they do not have a public duty with which their private interests can conflict. Thus, because Task Force members do not exercise sovereign powers of the State or act on behalf of the State, they do not constitute officers of the State.

"Accordingly, the plain language of the definition of "employee" [in the Ethics Code] excludes task force members because (a) they are not nominated, appointed, or elected, and (b) they are not "public

officers" because they do not exercise any sovereignty of the State or act on its behalf. As Task Force members do not satisfy the two tests for an "employee" under section 84-3, HRS, they are not subject to the Ethics Code." (Bracketed material added; emphasis added.)

The Senate Majority Research Office's Memorandum of July 15, 2011 additionally stated:

"Including task force members within the scope of the Ethics Code frustrates the will of the Legislature and the public policy purposes in establishing task forces.

"The specific authority to convene a task force or to define its operations is not found in either the Hawaii State Constitution or the Hawaii Revised Statutes. Rather, in the exercise of the Legislature's inherent legislative powers pursuant to article III, section 1 of the Hawaii State Constitution, the Legislature authorizes task forces on an ad hoc basis to perform an information-gathering function, specifically to investigate certain policy issues and to make non-binding recommendations to the Legislature for proposed future laws. In establishing task forces, the Legislature brings together stakeholders and those who may come to the Legislature to testify or petition legislators regarding legislation in order to give these individuals and representatives an opportunity to discuss their divergent views and to make recommendations to the Legislature. It is not unusual that these stakeholders may also act as lobbyists for their particular business or interests, because often, it is lobbyists who have the necessary expertise and are in the best position to advocate and make recommendations to the Legislature. During task force meetings, members share information and viewpoints and hammer out compromises on complicated legislative issues. Essentially, these task force meetings serve as a prescreening of legislative committee meetings, saving legislators time by creating recommendations that are intended to address the respective concerns of stakeholders. During the legislative session, members of the public and these and other stakeholders may comment on and request amendments or changes to the task force's recommendation. However, the task force's recommendation serves as an important starting point for the Legislature." (Emphasis added.)

#### **F. Why Senate Bill 893 is needed.**

Even though the Mortgage Foreclosure Task Force terminated on June 30, 2012, this Bill is not moot. The Ethics Commission is able to conduct investigations and to take actions against alleged violations going back 6 years, including actions in 2012 and 2011. The 6 year statute of limitations is in HRS Sec. 84-31(a)(6). **Mr. Kondo has not said ... and he will not say ... that the Ethics Commission will not pursue any action against Task Force members for any alleged violations prior to July 3, 2012 (the effective date of Act 208) based on Mr. Kondo's "erroneous" determination.**

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And, this Bill is not just about exempting one person or about exempting all the members of the Mortgage Foreclosure Task Force. This Bill will also exempt the members of all other task forces that were in existence during the past two years. Those task force members were placed in jeopardy by the “erroneous” determination made by Mr. Kondo on May 26, 2011 that task force members are state “employees” for the purpose of the State Ethics Code.

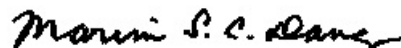
**G. Conclusion.**

Act 208, effective July 3, 2012, corrected Mr. Kondo’s “erroneous” determination that task force members are state “employees” for the purpose of the State Ethics Code. The Act exempted future members of state task forces from some of the restrictions and prohibitions of the Ethics Code.

**Senate Bill 893 simply furthers the purpose of Act 208 by specifying a retroactive date of June 3, 2010. This Bill reiterates the Legislature’s intent that certain task forces created before the effective date of Act 208 are exempt from specific provisions of the Ethics Code.**

**For these reasons, we support this Bill. We ask that the retroactive date continue as June 30, 2010, and we request that the effective date of this Bill be “on approval”.**

Thank you for considering our testimony.



MARVIN S.C. DANG  
Attorney for Hawaii Financial Services Association

Presentation To  
House Committee on Legislative Management  
March 21, 2013 at 2:00pm  
State Capitol Conference Room 423

**Testimony in SUPPORT of Bill S. B. 893, SD1**

TO: The Honorable Scott Y. Nishimoto, Chair  
The Honorable John M. Mizuno, Vice Chair  
Members of the Committee

My name is Edward Pei and I am the Executive Director of the Hawaii Bankers Association (HBA). HBA is the trade association representing all FDIC insured depository institutions operating in the State of Hawaii.

The legislature was wise to pass legislation last session (Act 208 became effective on July 3, 2012) to exempt members of task forces from certain provisions of the State's code of ethics. Not doing so would discourage members of the community from participating on task forces. The Mortgage Foreclosure Task Force was created by Act 162 in 2010, and served a critically important purpose. The Task Force served for two long years, with its term expiring on June 30, 2012, just days prior to the enactment of Act 208. Although its creation and duration occurred before enactment of Act 208, those task force members really should be afforded the same privileges, as it was the intent of Act 208 to protect all task force members from specific requirements of the ethics code. We urge the passage of SB 893, SD1 and thank the members of this task force for their important work and countless hours of devoted service.

Thank you for the opportunity to submit this testimony and please let us know if we can provide further information.

Edward Y. W. Pei  
(808) 524-5161



***Mortgage Bankers Association of Hawaii***  
***P.O. Box 4129, Honolulu, Hawaii 96812***

March 20, 2013

The Honorable Scott Y. Nishimoto, Chair,  
The Honorable John M. Mizuno, Vice Chair, and  
Members of the House Committee on Legislative Management  
State Capitol, Room 423  
Honolulu, Hawaii 96813

Re: Senate Bill 893, SD1 Relating to Ethics

Chair Nishimoto, Vice Chair Mizuno, and Members of the House Committee on  
Legislative Management:

I am Linda Nakamura, representing the Mortgage Bankers Association of Hawaii ("MBAH"). The MBAH is a voluntary organization of real estate lenders in Hawaii. Our membership consists of employees of banks, savings institutions, mortgage bankers, mortgage brokers, and other financial institutions. The members of the MBAH originate the vast majority of residential and commercial real estate mortgage loans in Hawaii. When, and if, the MBAH testifies on legislation, it is related only to mortgage lending.

The MBAH supports Senate Bill 893. SD1 Relating to Ethics.

Act 208 enacted in 2012 exempted members of legislative task forces from some provisions of the State Code of Ethics. Legislative task forces were created to provide the legislature with information from subject matter experts to assist our legislatures in creating laws to benefit our community. Legislative task force members are volunteer members of our community who commit time out of their own busy work and personal lives in the same pursuit of the Legislatures.

Members of task forces created prior to Act 208 were not afforded the same rights. The MBAH provided two members to participate in the Mortgage Foreclosure Task Force in 2010. We feel that our member participants as well as all the participants of the Mortgage Foreclosure Task Force in 2010 should be afforded the same rights in Act 208.

Thank you for the opportunity to present this testimony.

LINDA NAKAMURA  
President, Mortgage Bankers Association of Hawaii

888 Mililani Street, 2<sup>nd</sup> Floor  
Honolulu, Hawaii 96813-2918  
March 20, 2013

HOUSE COMMITTEE ON LEGISLATIVE MANAGEMENT  
REGARDING SENATE BILL 893, SD1

Hearing Date: THURSDAY, March 21, 2013  
Time : 2:00 p.m.  
Place : Conference Room 423

Chair Nishimoto, Vice Chair Mizuno, and Members of the Committee,

My name is John Morris and I am testifying in support of Senate Bill 893, SD1. Last year, I served on the Mortgage Foreclosure Task Force and was surprised by the ruling that certain members of the task force had conflicts of interest serving on the task force. There seemed to be no logical basis for the ruling. Therefore, SB 893, SD1 serves a worthwhile purpose of clarifying there was no conflict of interest and should be no conflict of interest when volunteers agreed or agree to serve on a task force to assist the Legislature.

In 2012, there was no confusion or misunderstanding on the Mortgage Foreclosure Task Force that certain people represented certain interest groups and held positions supporting those interest groups. Every member of the Mortgage Foreclosure Task Force was very clear on that issue. In addition, that was true of everyone on the task force: they all had positions to advocate. Moreover, recognizing that everyone had a particular position was not seen as a conflict or even a disadvantage. Instead, it was seen as a benefit, by allowing the task force to receive information on all points of view and to hear arguments from all sides on how mortgage foreclosures should be handled.

The fact that some of the members of the task force were or might have been paid lobbyists for their interest groups seems to have been significant in the ruling of conflict of interest. I received no payment and was simply on the task force as a representative of the homeowner association interest group. Nevertheless, the possibility that some members of the group might have been or have served as paid lobbyists did not change my perception of the benefits of having them on the task force. Nor did it give them any advantage.

TESTIMONY REGARDING SENATE BILL 893, SD1

March 20, 2013

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Certainly, their opinions received no more weight than anyone else's opinion, paid or unpaid. Moreover, the benefit of having them on the task force was to provide the opinions and concerns of their interest groups. The Legislature's purpose in appointing task forces would be undermined if the task forces did not consider and present all points of view on the subject of the task force. In addition, whether paid or not, everyone else on the task force, including me, was working hard to advocate and protect the interests of the group they represented, consistent with the overall benefit to the community.

Finally, everyone on the committee recognized -- and it was made clear to everyone on the committee -- that they were only making recommendations to the Legislature and that the Legislature would make the ultimate decision on any legislation that might be recommended by the task force. On that basis, the fact that anyone represented a particular interest group and was paid or not paid to do so was irrelevant for purposes of the work of the task force.

In summary, potential members of a task force should not be prohibited or have their participation in a task force limited by claims of conflict of interest because they represent particular groups or interests. Otherwise, the legislature will lose sources of important and relevant information that should be available to allow them to make informed and reasonable decisions for their constituents. The fact that task force members are paid or unpaid has no bearing on that issue. Therefore, I support SB 893, SD1.

Please contact me at 523-0702 if you have any questions. Thank you for this opportunity to testify.

Very truly yours,

A handwritten signature in black ink, appearing to read 'John A. Morris', written over a horizontal line.

John A. Morris

JAM:alt

G:\C\2013 Testimony SB 893, SD1 (03.20.13)

**SB893**

Submitted on: 3/20/2013

Testimony for LMG on Mar 21, 2013 14:00PM in Conference Room 423

Submitted By	Organization	Testifier Position	Present at Hearing
john	Individual	Oppose	No

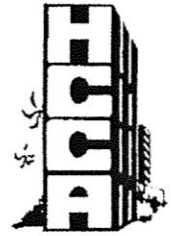
Comments: this rule is opposed to aloha and you should be ashamed for even considering it

Please note that testimony submitted less than 24 hours prior to the hearing, improperly identified, or directed to the incorrect office, may not be posted online or distributed to the committee prior to the convening of the public hearing.

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**Hawaii Council of Associations  
of Apartment Owners**  
**DBA: Hawaii Council of Community Associations**  
1050 Bishop Street, #366, Honolulu, Hawaii 96813



March 20, 2013

**LATE**

Rep. Scott Y. Nishimoto, Chair  
Rep. John M. Mizuno, Vice-Chair  
House Committee on Legislative Management

Re: SB893 SD1 RELATING TO ETHICS  
Hearing: Thurs., March 21, 2013, 2 p.m., Conf. Rm. #423

Chair Nishimoto, Vice-Chair Mizuno and Members of the Committee:

I am Jane Sugimura, President of the Hawaii Council of Associations of Apartment Owners (HCAAO). I was a member of the Mortgage Foreclosure Task Force in 2011 and in 2012. HCAAO's participation on the Task Force was specifically required by Act 182 since our constituent group, i.e., condominium associations, were stakeholders in connection with changes to the foreclosure laws and procedures. When HCAAO was asked to participate in the Task Force and to share our expertise with the Task Force, I was not aware that I and my organization would be subject to the State ethics law since I was neither a State employee nor did I consider my participation in the Task Force as taking official action that directly affected a business or undertaking in which I had a financial interest.

I join in the comments contained in John Morris' testimony in support of this measure. I fully agree with the intent and purpose of this bill and ask that it be passed without any further amendments.

Thank you for the opportunity to testify.

Jane Sugimura  
President



**LATE**

*Democracy Under the Rule of Law is Based on Public Access*

March 21, 2013

Committee on Legislative Management  
Hawai'i State Legislature

Re: S.B. 893, S.D. 1, Relating to Ethics  
Hearing on Thursday, 03/21/13 at 2:00 PM, Room 423

Dear Chair Nishimoto, Vice-Chair Mizuno, and Committee on Legislative Management members:

Thank you for the opportunity to testify.

We **oppose** this measure. We believe that retroactive exemption generally, and especially an exemption designed for the benefit of a particular individual, sets a disturbing precedent, and further undermines our ethics laws.

In this case, what was illegal before 2012's Act 208 was indeed, as a matter of law, illegal before Act 208, and it is appropriate that the law continue to reflect this.

Please do not pass S.B. 893.

Sincerely,

R. Elton Johnson, III  
Open Law Alliance



1654 South King Street  
Honolulu, Hawaii 96826-2097  
Telephone: (808) 941.0556  
Fax: (808) 945.0019  
Web site: [www.hcul.org](http://www.hcul.org)  
Email: [info@hcul.org](mailto:info@hcul.org)



**LATE**

Testimony to the House Committee on Legislative Management  
March 21, 2013

Testimony in Support of SB 893 SD1, Relating to Ethics

To: The Honorable Scott Nishimoto, Chair  
The Honorable John Mizuno, Vice-Chair  
Members of the Committee

My name is Stefanie Sakamoto, and I am testifying on behalf of the Hawaii Credit Union League, the local trade association for 78 Hawaii credit unions, representing approximately 804,000 credit union members across the state.

We are in support of SB 893 SD1, Relating to Ethics, which would provide an exemption for members of task forces or working groups established by the legislature from the conflict of interest law under the state ethics code, and excludes such members from the definition of "employee". As the legislature is aware, an ethics problem arose with respect to the Mortgage Foreclosure Task Force in 2011, of which HCUL was a member. We appreciate the efforts of the legislature to provide an exemption for the Mortgage Foreclosure Task Force, and to avoid similar problems in the future, so that we may continue to participate in such task forces and/or working groups if asked.

Thank you for the opportunity to testify.

**LATE****SB893**

Submitted on: 3/21/2013

Testimony for LMG on Mar 21, 2013 14:00PM in Conference Room 423

Submitted By	Organization	Testifier Position	Present at Hearing
Larry Meacham	Individual	Oppose	No

Comments: March 20, 2013 Testimony to the Committee on Legislative Management OPPOSING SB 893 SD1 Thank you for the opportunity to offer testimony. There are three reasons to oppose this bill. First is the general prohibition against ex post facto legislation. We don't want Hawaii to be acting like Italy's notorious Silvio Berlusconi, who repeatedly circumvented criminal convictions by retroactively changing the laws. Any time you go back and change the law regarding previous behavior, you are entering on a slippery slope indeed. Not only could you exempt illegal behavior, as this bill would, but you could retroactively criminalize previously legal behavior. Who knows where that could lead. Second is the general prohibition against private laws. When you start tailoring laws that only apply to one person, all kinds of abuses can occur, usually in granting favors, but potentially in attacking someone. Finally, this sets a terrible example regarding the ethics laws. In order to keep public faith in the system, officials need to follow a high standard of ethical behavior. When someone is exempted from the ethics laws, let alone individually and retroactively, it makes a mockery of those laws and reinforces public cynicism about politics. Thank you for the opportunity to offer testimony. Larry Meacham 306B Lehua St. Wahiawa, HI 96786

Please note that testimony submitted less than 24 hours prior to the hearing, improperly identified, or directed to the incorrect office, may not be posted online or distributed to the committee prior to the convening of the public hearing.

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**LATE**

TO: Chair Nishimoto, Vice Chair Mizuno  
Members of the House Committee on Legislative Management

FROM: Barbara Polk

SUBJECT: Comments on SB 893 and Request for Amendment

I do not like the idea of applying exemptions to laws retroactively to individuals, because this sets a precedent for individuals to break laws and then seek redress from the legislature. I therefore oppose the change proposed to SB 893. However, the remainder of my testimony concerns another matter.

Last year the legislature made a change to the ethics law that exempts legislators from the “fair treatment” section of the law. This may have been an unintended consequence of the change. However, this year, five different bills were introduced, any one of which would have corrected that error, but none received a hearing. Please see the Op-Ed published in Civil Beat, attached to this testimony.

I am asking that the committee show its good faith by amending SB 893 to make the correction. The relevant section of the statute is as follows, with the problematic wording highlighted in yellow:

**§84-13 Fair treatment.** No legislator or employee shall use or attempt to use the legislator's or employee's official position to secure or grant unwarranted privileges, exemptions, advantages, contracts, or treatment, for oneself or others; including but not limited to the following:

(1) Seeking other employment or contract for services for oneself by the use or attempted use of the legislator's or employee's office or position.

(2) Accepting, receiving, or soliciting compensation or other consideration for the performance of the legislator's or employee's official duties or responsibilities except as provided by law.

(3) Using state time, equipment or other facilities for private business purposes.

(4) Soliciting, selling, or otherwise engaging in a substantial financial transaction with a subordinate or a person or business whom the legislator or employee inspects or supervises in the legislator's or employee's official capacity.

Nothing herein shall be construed to prohibit a legislator from introducing bills and resolutions, or to prevent a person from serving on a task force or from serving on a task force committee, or from making statements or taking official action as a legislator, or a task force member or a task force member's designee or representative. Every legislator, or task force member or designee or representative of a task force member shall file a full and complete public disclosure of the nature and extent of the interest or transaction which the legislator or task force member or task force member's designee or representative believes may be affected by the legislator's or task force member's official action. [L 1972, c 163, pt of §1; gen ch 1985; am L 2012, c 208, §4]

I urge you to restore the previous wording of this part as it pertains to legislators, as well as rethink how the change applies to task force members. Following is the original wording:

Nothing herein shall be construed to prohibit a legislator from introducig bills and resolutins or from making statements or taking action in the exercise of the legislator's legislative functions.

Thank you for your consideration.

Published in Civil Beat, March 12, 2013

<http://www.civilbeat.com/voices/2013/03/12/18553-was-it-a-mistake/>

Was It a Mistake?

Last year the State legislature passed a bill intended to exempt members of temporary task forces from sections of the state ethics code. But in the process, they also exempted themselves from the “fair treatment” section of the code:

“No legislator or employee shall use or attempt to use the legislator’s or employee’s official position to secure or grant unwarranted privileges, exemptions, advantages, contracts, or treatment, for oneself or others”

HB 2175 (which became Act 208 with the governor’s signature) exempted task force members from these and other provisions—bad enough, since it leaves a wide open door for favoritism when one industry representative is allowed to benefit from information not available to others. But it also broadened a previous exemption for legislators that applied only when engaged in their legislative functions. Now the exemption applies to *anything* they do in their role as a legislator.

An example that would have come under scrutiny prior to approval of Act 208 was Maui\* Senator Josh Green’s intervention in a payment dispute between the city and Automated HealthCare Solutions. Although he did not advocate a specific solution, he did call the city offer “unreasonable”. Eight days later, Green received a campaign contribution from Automated HealthCare Solutions for \$2000. When the matter became public, Sen. Green donated the money to charity, claiming that he had not intended to be taking the company’s side.

However, even if he had intended to influence the decision, that would not have been a violation of the ethics code under Act 208’s exemption.

Legislators have claimed that the broadening of the exemption for legislators was a mistake. In this legislative session, Sen. Green submitted SB 669, a simple, straight-forward bill making the correction. Meanwhile, the Ethics Commission submitted four bills—HB209, HB210, SB429 and SB 430—each of which would have eliminated the legislative exemption while making other changes in the code. Les Kondo, Executive

Director of the Ethics Commission, spoke with various legislators and staff about the need to pass a bill to correct last year's bill.

But now we are at the mid-point of the legislative session, when bills that have passed three readings in one house move to the other house. Other bills are dead for this session. All five bills that would have corrected last year's mistake failed to meet that deadline and have died—in fact, none of the five even had a hearing before any legislative committee!

So was the exemption of legislators from the “fair treatment” section of the Ethics Code a mistake?

It will be hard to convince the public that legislators have not intentionally widened the arena for corruption in government unless they are able to find another bill amenable to an amendment to correct the “mistake.”

\*(With apologies to Sen. Green for placing him on the wrong island.)